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Supreme Court, U.S.
FILED
MAR 26 2004
OFFICE OF THE CLERK

No. 03-1430

# In The
# Supreme Court of the United States

MONTGOMERY BLAIR SIBLEY,

*Petitioner,*

vs.

BARBARA SIBLEY,

*Respondent.*

**On Petition For Writ Of Certiorari To The District Court Of Appeal Of Florida, Third District**

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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## STATEMENT

In the instant case, Petitioner was afforded a trial on the merits with regard to Respondent's Petition for Permanent Change of Custody of the parties' minor children and full plenary review of the trial court's ruling on this petition which permanently changed custody from Petitioner to Respondent.[1] That ruling was affirmed per curiam without opinion by the Florida District Court of Appeal, Third District. *Sibley v. Sibley*, 866 So.2d 1223 (Fla. 3DCA 2003).[2] As there is no written opinion to be reviewed, the decision neither conflicts with the decision of another court nor decides an important federal question in a way which conflicts with a decision of this Court. For this reason, Respondent respectfully urges this Honorable Court to deny the Petition for Writ of Certiorari.

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[1] Petitioner has obtained appellate review of various interlocutory rulings of the family court relating to custody and support. In *Sibley v. Sibley*, 815 So.2d 673 (Fla. 3DCA), *rev. den.* 833 So.2d 774 (Fla. 2002) Petitioner appealed the family court's temporary change of custody from Petitioner to Respondent. In *Sibley v. Sibley*, 816 So.2d 136 (Fla. 3DCA 2002), Petitioner appealed the family court's ruling ordering him to pay the educational expenses of the parties' minor children as per the terms of the Marital Settlement Agreement. The state appellate court affirmed both rulings.

[2] As the state intermediate appellate court's affirmance was without written opinion, the Florida Supreme Court lacked jurisdiction to review the decision. *Jenkins v. State*, 385 So.2d 1356 (Fla. 1980); Fla.R.App.Pro. 9.030(a). For this reason, the decision of the intermediate state appellate court is the decision "by the highest court of a state in which a decision can be had" for purposes of this court's jurisdiction. 28 U.S.C. §1257.

## RESPONSE TO PETITIONER'S STATEMENT OF THE CASE

A final judgment of divorce was entered by the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Family Division (hereinafter the "trial court") which incorporated a Marital Settlement Agreement. This agreement provided that Petitioner's residence was the primary residence of the children and was to be located in the vicinity of the children's private schools. The children resided with Respondent over the weekends.

On July 31, 2000, Respondent filed an Emergency Motion for Temporary Primary Physical Residence of the Minor Children and to Allow the Minor Children to be Enrolled in Private School and Prohibiting Their Removal to Washington, D.C. In this motion, Respondent alleged there had been a substantial change of circumstances regarding the minor children in that Petitioner had abandoned the minor children physically, financially, and emotionally. Respondent alleged it was in the best interests of the minor children that a temporary order be entered allowing her residence to be the primary physical residence of the minor children until a petition for modification could be filed and the merits of such petition determined.

After an extensive evidentiary hearing on the merits of the emergency motion, the trial court granted

Respondent's emergency motion (App. 1-7).[3] The order contained the following findings:

> D. The Former Husband may have had a relationship with the minor children in the past, but his actions and words since his remarriage and birth of his son, SASHA, have continuously negatively escalated to the point where it would be detrimental for the children to be with their father.
>
> E. The Court has heard testimony of the children being physically hit.
>
> F. Emotionally, the children have been devastated by the Former Husband's behavior such as keeping the children home from school as punishment, using the children as indentured servants to babysit his new child, failing to have any contact whatsoever with the children for months at a time, and economically depriving the children of necessities and interfering with their education.
>
> G. The Court has had the unique opportunity to view the correspondence between the parties. The Former Husband's attempt to gain financial concessions from the Former Wife in exchange for a Court order confirming the primary physical residence of the children to the Former Wife reveals a deliberate attempt to "sell" the children to the Former

[3] The letters "App." shall represent the Appendix to this Brief in Opposition to the Petition for Writ of Certiorari.

Wife for the Former Husband's own economic benefit.

H. The Former Husband has shown preferential treatment to his new child, SASHA, economically, emotionally and in every way possible to the detriment of the children of this marriage.

L. The Former Husband has put his new wife before his children, on an occasion where the Former Husband was to visit with LIZA at boarding school, he canceled the visitation because SASHA was ill and would not visit without SASHA and his new wife accompanying him to visit LIZA.

M. The Former Husband has divested himself of funds in order not to pay child support.

N. The Former Husband delivered all of the children's belongings to the Former Wife prior to his leaving Miami. This Court believes that the parties as well as the children had a clear understanding that the children would remain with the Former Wife as the Former Husband departed to Washington, D.C. with his new wife and child. The Former Husband obtained a one-bedroom apartment upon his relocation to Washington, D.C. which this Court finds supports the understanding of the parties that the children would remain with the Former Wife.

R. Both children are in fear of their father.

(App. 2-5)

This order was affirmed on appeal by the District Court of Appeal of Florida, Third District. *Sibley v. Sibley*, 816 So.2d 136 (Fla. 3DCA 2002) (App. 9-10).

Between the filing of the motion for temporary relief and the trial court's order thereon, Respondent filed a Petition for Modification of Primary Physical Residence and Designation of Sole Responsibility as to the Minor Children of the Marriage Based Upon a Substantial Change in Circumstances. After a multi-day evidentiary hearing on this Petition for Modification, the trial court granted the petition (App. 10-17). The order granting this petition contains the following pertinent findings:

> As there was a Marital Settlement Agreement, the first issue the court should address in determining custody of these children is whether the Agreement of the parties addressed the issue. The court finds that the clauses noted above clearly reflect the intention of the parties. The Court finds that the original intent of the parties was that the children would reside with the father, who would live near the schools. This was clearly done for the educational benefit of the children and the convenience of the parties. If the father was to move out of South Florida, the intent was that the children would reside with the mother and the father would pay support. It was a self-executing clause, as evidenced further by paragraph 4 of the agreement. "It is the agreement of the parties that the care, health, education and future of their children is primary among their concerns, and that the children **remain at the current educational institutions. . . .** " (Emphasis added). The court will enforce the agreement. Pursuant to the Marital

Settlement Agreement, custody of the two minor children shall be with Mrs. Sibley.

This Court also finds that it is in the best interests of the children that custody be with the Former Wife . . .

The evidence and the course of conduct by Mr. Sibley with his children, convinces this Court that in great measure, Mr. Sibley's insistence on being primary residential parent has much more to do with money and the children's trust funds than his love for his children. It has more to do with a punishment of Barbara Sibley than the concern for the best interests of the children . . . Mr. Sibley seeks to use the older children as pawns in the game against Barbara Sibley or in an attempt to relieve himself of the financial obligations pursuant to the Marital Settlement Agreement. His attempt to litigate everything to death is due to Mr. Sibley's disinclination to pay child support and his need to exercise control over his children's lives and material wealth. If it were not so, he would have made the necessary contacts to continue his relationships with his older children, balancing their needs in some fashion, with the needs of his new family. Further evidence of using the children as pawns to avoid payment of child support is his letter to Barbara Sibley stating that he will continue to litigate until he is disbarred or she is bankrupt. This is not the behavior of someone who has the best interests of the children at heart.

Instead, Mr. Sibley has made no effectuate (sic) court ordered preconditions to visiting his children . . . In actuality, Mr. Sibley has not taken any interest in the two minor children's health, education or welfare since he left Florida

> more than two years ago. His only interest in education is to insist that the children go to public school, so he will not have to pay for their education. He has not paid any child support. He has litigated every issue and filed numerous frivolous motions and lawsuits. He has treated these children as objects to be negotiated, rather than children with emotions and needs.[4]

(App. 12-16)

This appeal was affirmed per curiam without opinion by the District Court of Appeal of Florida, Third District (App. 18).

## RESPONSE TO PETITIONER'S REASONS FOR GRANTING THE PETITION

### A.

There must be a compelling reason for this Court to grant a petition for writ of certiorari. The principal purpose for certiorari review by this Court is to resolve conflicts among the various circuits and state courts concerning the meaning of provisions of federal law as opposed to conducting plenary appellate review of a trial court's decision. *Braxton v. United States*, 500 U.S. 344 (1991). This exacting standard cannot be satisfied in the case at bar because there is no written opinion by the

[4] The District Court of Appeal of Florida, Third District in *Sibley v. Sibley*, 833 So.2d 847, 849 (Fla. 3DCA 2002), *rev. den.* 854 So.2d 660 (Fla. 2003), *cert. den.* ___U.S.___, 124 S.Ct. 1074, 157 L.Ed.2d 895 (2004) held that the Petitioner has a "stubborn, self-immolating hatred of and vendetta against his ex-wife."

court below. For this reason, there can be no conflict between the decision rendered below and that of any other court on an issue of constitutional or federal law. The Petition for Writ of Certiorari should be denied.

**B.**

Supreme Court Rule 10 indicates that a writ of certiorari will rarely be granted when the asserted error consists of a misapplication of a properly stated rule of law. The petition in this case violates this rule because what Petitioner really seeks is a second appeal as to each of the multiple rulings which led to the trial court's order granting Respondent's Petition for Modification.

The Petition for Writ of Certiorari directly addresses the trial court's grant of a permanent change of custody to Respondent and contains little or no mention of the appellate court's affirmance of that order, even though it is the appellate court's ruling that is the predicate to this Court's jurisdiction. Through his petition, Petitioner challenges multiple actions of the trial court which Petitioner contends are either contrary to the substantive law of Florida or a violation of his due process and equal protection rights. However, the findings of the trial court both in the Order Granting Former Wife's Motion for Temporary Physical Residence of the Minor Children (App. 1-7) and the Order Granting Petition for Modification of Primary Physical Residence (App. 10-17), amply reflect a substantial evidentiary basis for the rulings of the trial court which were affirmed by the appellate court. There is no compelling reason for this Court to exercise jurisdiction over the instant cause.

## C.

With regard to the contention that the amount of Petitioner's child support obligation offends equal protection, this support obligation was agreed to by Petitioner in the marital settlement agreement. The order of the trial court which is the genesis of the instant Petition for Writ of Certiorari, granted a Petition for Modification of Primary Physical Residence. The order does not rule on any petition to modify child support nor was any such issue tried before the trial court. Consequently, this point is not preserved for review and has not yet been adjudicated by the trial court.[5]

## D.

Petitioner argues that enforcement of the agreed upon child support obligation contained in the parties' marital settlement agreement and adopted by the trial court in its final judgment violates equal protection because the minor children of the parties' marriage benefit disproportionately when compared to Petitioner's child from his second marriage. This argument is based upon a faulty predicate because the trial court has repeatedly found that Petitioner has the ability to pay the child support. *See: Sibley v. Sibley*, 833 So.2d 847 (Fla. 3DCA 2002), *rev. den.* 854 So.2d 660 (Fla. 2003), *cert. den.* ___ U.S. ___, 124 S.Ct. 1074, 157 L.Ed.2d 895 (2004). For this reason, assuming Petitioner has standing to raise this argument, there is no substance to Petitioner's argument that the child of his second marriage has been denied equal protection due to

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[5] Such a motion presently is pending before the trial court but a trial on said motion has yet to occur.

the trial court's enforcement of the child support in the case at bar.

**E.**

Petitioner complains that the form of the decision of the appellate court below, a per curiam affirmance without opinion, violates equal protection. However, Petitioner's equal protection analysis is deficient because it fails to establish that the instant case falls within a suspect classification requiring strict scrutiny. For this reason, the equal protection claim is subject to a rational basis analysis and Petitioner has not established that the appellate court's decision below to affirm without opinion in this case is irrational.

The criteria utilized by Florida appellate courts in determining whether to issue a written opinion in Florida were addressed by the Court in *Elliott v. Elliott*, 648 So.2d 137, 138 (Fla. 4DCA 1994):

> It is fundamental black letter law that a per curiam disposition affirming a trial court order without a written opinion, occurs when the points of law raised are so well settled that a further writing would serve no useful purpose. The sheer volume of appeals, in and of itself, would seemingly indicate the impossibility of a written opinion on every affirmance.

To the same effect is *Taylor v. Knight*, 234 So.2d 156, 157 (Fla. 1DCA 1970):

> This court and not the attorney for the losing party is charged with the responsibility of deciding which cases merit and warrant a full written opinion upon the basis of that opinion's contribution to the jurisprudence of this State and those

> cases of great public interest. This Court is not now denying and has not denied appellants herein any constitutional right and has not overlooked or failed to consider the jurisprudence of this State in ruling upon the merits of the appeal by deciding a case without a written opinion.

The appellate court below by not issuing a written opinion in the case at bar, had to have concluded that a written opinion in this case would add nothing to the jurisprudence of the State of Florida. This conclusion has a rational basis given the specificity of the findings of the trial court as to the reasons for its rulings. Petitioner has failed to present an important federal question in his Petition for Writ of Certiorari worthy of the attention of this Honorable Court.

## CONCLUSION

For all the foregoing reasons, the Former Husband's Petition should be denied.

Dated: May 26, 2004

Respectfully submitted,

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**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA**

IN RE: The Marriage of:

BARBARA SIBLEY,

Petitioner/Former Wife,

and

MONTGOMERY BLAIR SIBLEY,

Respondent/Former Husband /

FAMILY DIVISION

CASE NO.:
94-18177 FC19

**ORDER GRANTING FORMER WIFE'S EMERGENCY MOTION FOR TEMPORARY PRIMARY PHYSICAL RESIDENCE OF THE MINOR CHILDREN AND TO ALLOW MINOR CHILDREN TO BE ENROLLED IN PRIVATE SCHOOL AND PROHIBITING THE REMOVAL OF THE CHILDREN TO WASHINGTON, D.C. AND DENYING RESPONDENT'S EMERGENCY MOTION FOR CONTEMPT AND ENFORCEMENT AND TO MODIFY VISITATION SCHEDULE**

**THIS MATTER** coming on to be heard on September 24 and 25, 2001 and October 8, 2001, upon the Former Wife's Emergency Motion for Temporary Primary Physical Residence of the Minor Children and to Allow Minor Children to be Enrolled in Private School and Prohibiting the Removal of the Children to Washington, D.C., and Respondent's Emergency Motion for Contempt and Enforcement and to Modify Visitation Schedule, and the Court having heard the testimony, argument and being duly advised in the premises, finds as follows:

A. This matter has had a significant amount of motions and activity before the Court and the Court has

had the opportunity at length to observe the demeanor of the parties, to intimately review their actions and their words to each other and to their children through testimony and through written correspondence introduced as evidence.

B. The Court has reviewed the lengthy correspondence between the parties, prior Orders and all of the evidence submitted in this matter.

C. This Court has been in the unique position of observing not only the context of the words spoken during testimony, but the demeanor and behavior of the parties.

D. The Former Husband may have had a relationship with the minor children in the past, but his actions and words since his remarriage and birth of his son, SASHA, have continuously negatively escalated to the point where it would be detrimental for the children to be with their father.

E. The Court has heard testimony of the children being physically hit.

F. Emotionally, the children have been devastated by the Former Husband's behavior such as keeping the children home from school as punishment, using the children as indentured servants to babysit his new child, failing to have any contact whatsoever with the children for months at a time, and economically depriving the children of necessities and interfering with their education.

G. The Court has had the unique opportunity to view the correspondence between the parties. The Former Husband's attempt to gain financial concessions from the Former Wife in exchange for a Court order confirming the

primary physical residence of the children to the Former Wife reveals a deliberate attempt to "sell" the children to the Former Wife for the Former Husband's own economic benefit.

H. The Former Husband has shown preferential treatment to his new child, SASHA, economically, emotionally and in every way possible to the detriment of the children of this marriage.

I. The Court has listened to the recommendations of the Guardian Ad Litem in this matter. The Court selected Dirk Lorenzen as a Guardian Ad Litem because of his qualifications as a psychologist, although not licensed to practice in the State of Florida, and his human ability to bond with children of this age. The Guardian Ad Litem has done a thorough and complete job in reviewing this matter and making his recommendations.

J. The Former Wife has done everything she could to foster a relationship between the Former Husband and the minor children. She sent flowers on behalf of the children to the Former Husband's new wife at the time of their marriage, purchased gifts for the Former Husband, his new child and new wife, kept the Former Husband informed of all activities of the children, and ultimately made sure that the children went on the Christmas visitation in 2000 despite monumental resistance from the children. The Former Wife's behavior has been positive and encouraging to the children despite the Former Husband's actions.

K. During Christmas, 2000, this Court ordered the children to visit with their father in the hopes of repairing the relationship. The visitation not only failed to repair their relationship, it destroyed any hope that the Former

Husband could have a relationship with his children. As soon as the children got off the plane and arrived at the Former Husband's residence, they were made to sit down and write numerous letters to their father describing each month's activities during which they had not seen him. They were ignored for Christmas and did not receive any gifts, although the Former Husband claimed that their plane flight was their gift. Although it was Liza's birthday on December 26th, she did not receive a gift, although the Former Husband claimed that her plane flight was her Christmas and birthday gift. On the other hand, it was SASHA's birthday during the children's visit, and they watched as SASHA opened presents and enjoyed a celebration for his birthday.

L. The Former Husband has put his new wife before his children. On an occasion where the Former Husband was to visit with LIZA at boarding school, he canceled the visitation because SASHA was ill and would not visit without SASHA and his new wife accompanying him to visit LIZA.

M. The Former Husband has divested himself of funds in order not to pay child support.

N. The Former Husband delivered all of the children's belongings to the Former Wife prior to his leaving Miami. This Court believes that the parties as well as the children had a clear understanding that the children would remain with the Former Wife as the Former Husband departed to Washington, D.C. with his new wife and child. The Former Husband obtained a one-bedroom apartment upon his relocation to Washington, D.C. which this Court finds supports the understanding of the parties that the children would remain with the Former Wife.

O. What is clear to this Court is that this case is about money. It is about MONTGOMERY BLAIR SIBLEY not wanting to face a Court determination for spending his children's trust money and not wanting to pay child support. The Former Husband has even manipulated his own father into not paying the tuition of the children and jeopardizing their educations.

P. The Former Husband has failed to furnish the Former Wife with insurance cards for the minor children's health care.

Q. The minor child, MONTGOMERY BLAIR SIBLEY, has threatened to run away if he is required to visit with his father.

R. Both children are in fear of their father.

S. The Court heard the testimony of the minor child, ELIZABETH MASON SIBLEY, and observed her demeanor and visible and palpable fear and dread towards her father.

T. The Former Husband has used his funds to provide schooling for SASHA and schooling for his new wife despite the Final Judgment which requires him to provide funds for the children of this marriage's education.

U. The Former Wife discussed and communicated the desire of the minor child, ELIZABETH MASON SIBLEY, to attend Madeira School which the parties' oldest child, MARGARET, had attended and graduated. The correspondence between the parties indicates the Former Husband's assent conditioned on the Former Wife's agreeing to other issues for his economic benefit. The child has been attending Madeira School and has been doing well.

V. The Court finds there has been a substantial change of circumstances sufficient to require the granting of the motion.

THEREFORE, IT IS ORDERED AND ADJUDGED:

1. That the Former Wife's Emergency Motion for Temporary Primary Physical Residence of the Minor Children and to Allow Minor children to be Enrolled in Private School and Prohibiting the Removal of the Children to Washington, D.C. is hereby GRANTED.

2. The Former Husband shall immediately furnish to the Former Wife insurance cards for the children.

3. The Former Husband's Emergency Motion for Contempt and Enforcement and to Modify Visitation Schedule is hereby DENIED.

4. No visitation shall take place between the Former Husband and the minor children until therapy takes place.

5. All testimony taken in this hearing shall be adopted and made a part of the hearing on the Former Wife's Petition for Modification of Primary Physical Residence.

6. The Court reserves jurisdiction to consider further recommendations of the Guardian Ad Litem as to the specific type of therapy which should occur prior to any visitation taking place.

7. The minor child, ELIZABETH MASON SIBLEY, shall be enrolled at Madeira School for this school year.

8. The Court reserves jurisdiction on the Former Wife's request for attorney's fees and costs.

DONE AND ORDERED in Chambers, at Miami, Miami-Dade County, Florida, this 10 day of December, 2001.

Maxine Cohen Lando
CIRCUIT COURT JUDGE

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NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT
OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 2002

MONTGOMERY BLAIR SIBLEY,

Appellant,

vs.

BARBARA SIBLEY

Appellee.

CASE NO. 3D02-102

LOWER TRIBUNAL NO. 99-21008

Opinion filed March 27, 2002

An appeal from the Circuit Court for Dade County, Florida, Maxine Cohen Lando, Judge.

Montgomery Blair Sibley, in proper person.

Bette E. Quiat; Jay M. Levy, for appellee.

Before GREEN and SHEVIN, JJ., and NESBITT, Senior Judge.

PER CURIAM.

The trial court entered its ruling after a lengthy evidentiary hearing, and father who appeals has not favored us with a trial transcript. The trial court's decision

arrives here clothed with a presumption as to its correctness, and the burden is on the appellant to demonstrate error. *See Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). As here, where a transcript of the testimony or other substitute is not supplied to the appellate court, the court must accept the factual findings in the judgment as being correct and assume they are supported by competent substantial evidence. *See Beniaminov v. Beniaminov*, 789 So. 2d 494 (Fla. 3d DCA 2001). The appellant's failure to provide us with a complete transcript of the testimony impacts upon all of the issues raised by him. For example, appellant complains that he has not had a meaningful hearing, that he was deprived of the opportunity to present his case, and that he was limited in the evidence he could introduce. With no transcript, or proffer, however, there is no way for this court to decide if error has occurred. *See Lucas v. State*, 568 So. 2d 18 (Fla. 1990).

Affirmed.

IN THE CIRCUIT COURT
OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

IN RE: The Marriage of

BARBARA SIBLEY,

Petitioner/Former Wife,

and

MONTGOMERY BLAIR SIBLEY,

Respondent/Former Husband /

FAMILY DIVISION

CASE NO.:
94-18177 FC 19

**ORDER GRANTING PETITION FOR MODIFICATION OF PRIMARY PHYSICAL RESIDENCE, AND DESIGNATION OF SOLE RESPONSIBILITY AS TO THE MINOR CHILDREN, ELIZABETH MASON SIBLEY AND MONTGOMERY BLAIR SIBLEY, JR., AND ENFORCEMENT OF THE FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE**

THIS MATTER coming on to be heard on June 4, 5, 6 and 7, 2002 and July 1, 2002 upon the Petition for Modification of Primary Physical Residence, and Designation of Sole Responsibility as to the Minor Children, ELIZABETH MASON SIBLEY and MONTGOMERY BLAIR SIBLEY, JR., and Enforcement of the Final Judgment of Dissolution of Marriage, and the Court having heard the report and recommendation of the Guardian ad Litem, and having had the opportunity to listen to the testimony and view the demeanor of the witnesses, and heard the argument of counsel, and in addition having taken judicial notice of the prior orders of the Court in this case, finds as follows:

The parties have extensively litigated the custody of the two minor children, ELIZABETH MASON SIBLEY (Liza) and MONTGOMERY BLAIR SIBLEY, JR., (Monty). The parties entered into a Marital Settlement Agreement, which was incorporated into the Final Judgment. Pursuant to this agreement, "the father's residence shall be the primary physical residence of the children. The father's residence shall be in the vicinity of the children's private schools."

The father left South Florida in May, 2000, leaving the children with the mother and without notice. The evidence demonstrates that it was the father's intent to have the children make their primary residence with the Former Wife when he moved to Washington. Based on the evidence, the father attempted to use custody of the children as a bargaining chip to relieve himself of the financial obligations he bargained for in the Marital Settlement Agreement.

Additionally, the Marital Settlement Agreement provides for the father's relocation out of the State of Florida.

> If the minor children's primary physical residence is with the mother and the father should move out of the South Florida area, so that husband cannot share in the day to day care of the children, husband shall pay to the wife not less than the sum of $4,000 per month for all three children (or divided into third (1/3) for each child until the completion of their individual college educations) as child support in addition to all of husband's other obligations herein recited. Regardless of any other provision herein the support paid (or value thereof) by husband shall not be less in value than set forth in the guidelines.

As there was a Marital Settlement Agreement, the first issue the court should address in determining custody of these children is whether the Agreement of the parties addressed the issue. The court finds that the clauses noted above clearly reflect the intention of the parties. The Court finds that the original intent of the parties was that the children would reside with the father, who would live near the schools. This was clearly done for the educational benefit of the children and the convenience of the parties. If the father was to move out of South Florida, the intent was that the children would reside with the mother and the father would pay support. It was a self-executing clause, as evidenced further by paragraph 3 of the agreement. "It is the agreement of the parties that the care, health, education and future of their children is primary among their concerns, and that the children **remain at the current educational institutions** . . ." (Emphasis added.) The court will enforce the agreement. Pursuant to the Marital Settlement Agreement, custody of the two minor children shall be with Mrs. Sibley.

This Court also finds that it is in the best interests of the children that custody be with the Former Wife.

The evidence shows that initially the Former Husband was a fine and caring father. Unfortunately, the Former's [sic] Husband's relationship with his children from this marriage declined when he remarried. This Court took testimony for several days that showed the difficulties of the relationship of the Former Husband and his older children. The Former Wife has had court ordered primary physical residence of the oldest child, MARGARET HARPER SIBLEY (Maggie), since March 26, 1999. There is no communication between Maggie and the

Former Husband. Maggie is in therapy and on medication due to the trauma of the divorce.

Liza, the middle child, was in a private boarding school during the 2001-2002 school year, minutes from the Former Husband's current residence. He did not visit her.

Monty, the youngest child, refuses to speak with his father and refused to be in the same room as his father. The last visitation occurred Christmas time 2000. Monty had to be persuaded by the Guardian ad Litem to get on the airplane. The trip proved to be a disaster. Monty and Liza brought Christmas presents for their father, stepmother and half brother, Sasha. They did not receive any Christmas presents. Mr. Sibley testified that he considered the tickets to fly to see him to be their presents, although he did not tell the children that in advance of their visit. Sasha, Mr. Sibley's son with his current wife, received numerous presents and opened them in the presence of Monty and Liza. Mr. Sibley did not spend any time alone with Monty and Liza. The children were deprived of the individual attention of their father.

Additionally, Monty and Liza slept on the floor. They were expected to baby sit Sasha for part of the visit. Mr. Sibley did not spend any quality time with Monty and Liza. Prior to Mr. Sibley allowing them vacation time, Monty and Liza were forced to sit and write letters to their father to explain what was happening in their lives. This is one of the many examples of a lack of meaningful communication. There was no attempt to have a conversation.

After this visit, there has been no contact between Monty and his father. Mr. Sibley testified that he sent Monty a book for his birthday. Monty did not send him a

thank you note. As Monty did not behave in an acceptable manner, Mr. Sibley does not wish to contact Monty until he apologizes. Mr. Sibley testified that he was willing to sacrifice his relationship with his son over a principle.

Mr. Sibley's relationship with Liza is also strained. As noted earlier, he did not visit her when she was attending school minutes away. There was testimony that there was a birthday dinner for Sasha, a toddler, with the family china and good silver, and presents, while Liza's birthday, during the same period was ignored.

There was also testimony that there were two different categories of food in the refrigerator. There was the food that only Mr. Sibley, his new wife and Sasha could eat, and there was the food that Liza and Monty were allowed to eat. This court can not help but think of the Cinderella fairy tale. The overwhelming evidence reveals that these children were emotionally abused by Mr. Sibley.

Mr. Sibley has also failed to make arrangements for the payment of the children's education. Paragraph 6 of the Marital Settlement agreement states "Husband shall be responsible for, pay for and or arrange to pay for all education expenses of the children while and until they achieve a college degree." The paternal grandfather had historically paid for their education, as he does for most of his other grandchildren. The grandfather testified that he did not want Barbara Sibley to benefit from his paying for the children's education. The education benefits the children, not Barbara Sibley. The children suffer as a result of the hostility directed toward the mother and the failure to fund their educations. Mr. Sibley breached the Marital Settlement Agreement by failing to arrange for the payment of the children's education. He has not only

failed to do so, he has interfered with the paternal grandfather's funding of the education.

The evidence and the course of conduct by Mr. Sibley with his children, convinces this Court that in great measure, Mr. Sibley's insistence on being primary residential parent has much more to do with money and the children's trust funds that his love for his children. It has more to do with a punishment of Barbara Sibley than the concern for the best interests of the children. His positions have been inconsistent. In a letter dated June 8, 2000 to Barbara Sibley, (Petitioner's exhibit C), he wrote "As to Liza, what purpose is served by transferring custody of her to you if she is going to be at Madeira for the next four years anyhow?" On May 9, 2001 he wrote, "I continue to object to Liza attending Madeira . . . " (Respondent's AA2).

Mr. Sibley seeks to use the older children as pawns in the game against Barbara Sibley or in an attempt to relieve himself of the financial obligations pursuant to the Marital Settlement Agreement. His attempt to litigate everything to death is due to Mr. Sibley's disinclination to pay child support and his need to exercise control over his children's lives and material wealth. If it were not so, he would have made the necessary contacts to continue his relationships with his older children, balancing their needs in some fashion, with the needs of his new family. Further evidence of using the children as pawns to avoid payment of child support is his letter to Barbara Sibley stating that he will continue to litigate until he is disbarred or she is bankrupt. This is not the behavior of someone, who has the best interest of the children at heart.

Instead, Mr. Sibley has made no effectuate court ordered preconditions to visiting his children. He has not seen his children for approximately 18 months since they returned from a court ordered visitation in January, 2001. Whatever relationship they had prior to his moving away, which was already in disrepair, since the time that he remarried, has been ruptured, perhaps beyond repair. In actuality, Mr. Sibley has not taken any interest in the two minor children's health, education or welfare since he left Florida more than two years ago. His only interest in education is to insist that the children go to public school, so he will not have to pay for their education. He has not paid any child support. He has litigated every issue and filed numerous frivolous motions and lawsuits. He has treated these children as objects to be negotiated, rather than children with emotions and needs.

WHEREFORE, IT IS ORDERED AND ADJUDGED that:

1. The Former Wife's Petition for Modification of Primary Physical Residence, and Designation of Sole Responsibility as to the Minor Children, ELIZABETH MASON SIBLEY and MONTGOMERY BLAIR SIBLEY, JR., and Enforcement of the Final Judgment of Dissolution of Marriage is hereby GRANTED. The Former Wife shall be the primary residential parent of the children, ELIZABETH MASON SIBLEY and MONTGOMERY BLAIR SIBLEY, JR.

2. The Former Wife, BARBARA SIBLEY, shall have sole parental responsibility of the minor children, as sole parental responsibility is in the minor children's best interest. The Former Wife shall continue to inform the

Former Husband of all major issues regarding the children's health, education and welfare.

3. The Former Husband owes to the Former Wife the sum of $100,000 ($4,000.00 per month from June, 2000 through June 2002) as arrears for child support pursuant to the parties' Marital Settlement Agreement and Final Judgement. A Final Judgment shall be entered for said arrears. The issue of contempt is addressed by separate order.

4. The Court reserves jurisdiction on the Former Wife's request for attorney's fees and costs, DONE AND ORDERED in Miami-Dade County, Florida, this 9 day of August, 2002.

/s/ Maxine C. Lando
Maxine Lando
Circuit Court Judge

Copies furnished to:
Bette Ellen Quiat, Esq.
Montgomery Blair Sibley
Dirk Lorenzen, Esq.

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION AND,
IF FILED, DISPOSED OF.

IN THE DISTRICT COURT
OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, 2003

| | | |
|---|---|---|
| MONTGOMERY BLAIR SIBLEY, | ** | |
| | ** | |
| Appellant, | ** | CASE NO. 3D02-2308 |
| | ** | |
| vs. | ** | Lower Tribunal No. 94-18177 |
| | ** | |
| BARBARA SIBLEY, | ** | |
| | ** | |
| Appellee. | ** | |

Opinion filed December, 3, 2003.

An Appeal from the Circuit Court for Dade County, Maxine Cohen Lando, Judge.

Montgomery Blair Sibley, in proper person.

Jay M. Levy; Bette Ellen Quiat, for appellee.

Caruana & Lorenzen and Dirk Lorenzen, for children.

Before COPE, LEVY, and SHEVIN, JJ.

PER CURIAM.

Affirmed.